HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP S/S No. 1154/05

Constable 65 C.P.

vs

Superintendent of
Police, Rudrapur

Approved for reporting

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~~Not approved for reporting~~

Date of decision 31.3.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1154 of 2005 (SS)

Constable 65 C.P. Anokhe Lal, Rudrapur
District Udham Singh Nagar ..... Petitioner

versus

1. Superintendent of Police, Rudrapur
2. Deputy Inspector General of Police, Kumaon Region, Nainital
3. Inspector General of Police, Uttaranchal
4. Additional Director General of Police, Uttaranchal

Sri C.K. Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 31.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri C.K. Sharma, counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28.4.2004 passed by the respondent no. 4.

Briefly stated the petitioner was appointed as Constable in the Police Department. On 28.4.2001 a show cause notice was served upon him to the effect as to why an adverse entry of censure be not awarded to him. The petitioner submitted his reply on 7.5.2001, which was rejected by the respondent no.1 on 16.5.2001. Against the order dated 16.5.2001 the petitioner preferred an appeal before the Deputy Inspector General of Police. The petitioner was server another show cause notice as

to why the period of suspension from 12.2.2001 to 2.7.2001 be not treated absence in service. Thereafter on 21.6.2001 the respondents have passed the impugned order directing that the petitioner shall not be entitled to get the salary for the suspension period.

Against the above order the petitioner preferred an appeal before the Deputy Inspector General, Kumaon Region, Nainital. According to the petitioner on 31.8.2002 he received a letter informing that both his appeals have been rejected by the Deputy Inspector General vide order dated 23.8.2002.

The petitioner thereafter, preferred two separate revisions before the Inspector General of Police, Uttaranchal, which were dismissed vide order-dated 28.4.2004.

Respondents have filed counter affidavit and have submitted that proceedings under Rule 14 (2) of Subordinate Police Officer/Servants Punishment and Appeals Rules 1991 were initiated against the petitioner and inquiry was entrusted to the Circle Officer, Rudrapur and after receipt of the inquiry report the petitioner was punished vide order No. N-21/2001 dated 16.5.2001. Thereafter the petitioner filed the appeal and revisions, which were rightly dismissed.

Counsel for the petitioner has submitted that provisions of Rule 4(1)(b)(iv), of Subordinate Ranks (Punishment and Appeal) Rules 1991 which contains a provision of censure entry was ultra vires to the provisions of section 7 of Police Act, 1961.

Counsel for the petitioner has placed reliance on the judgment of Allahabad High Court in the case Udhaipal Singh etc. vs. State of U.P. and others (2006(2) ESC 1036 (All) (LB), where the provisions of Rule 4(1)(b)(iv) was declared ultra vires to the provisions of section 7 of the Police Act.

The relevant observations of Allahabad High Court are quoted below:

"From a careful perusal of the above regulation and the provisions postulated thereunder, it is obvious that the power of awarding censure entry is not provided because section 7 of the Act does not authorize to formulate the said provision. Exclusion of the penalty of censure entry from paragraph 478 clearly and categorically lends assurance to the legal proposition that Section 7 of the Act does not authorize formulation of this kind of penalty in the rules or regulations.

In view of all what has been discussed above, I am of the decisive opinion that the provisions of Rule 4(1)(b)(iv) containing a provision of censure entry is ultra vires the provisions of Section 7 of the Police Act. It, therefore, deserves to be quashed."

I am fully in agreement with the findings arrived at by the Allahabad High court that Sub Clause (iv) of Rule 4 (1)(b) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 are ultra vires to the provisions of Section 7 of the Police Act. I have gone through the record of the present case, and I find that the facts of the present case are squarely covered with the facts of the present case.

In view of above, a writ of certiorari is issued quashing the censure entry awarded to the petitioner vide impugned orders dated 28.4.2004. The petitioner shall be entitled for full salary and allowances for the period he remained under suspension.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 31.3.2006 **Rajesh Tandon, J.**

*Dhyani